

**OUTTEN & GOLDEN LLP**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

RENE HERNANDEZ, REBECCA HESTON,  
JEFFREY STEINBERG, TRINITY GRAY, ERIC  
EBANKS, and WILLIAM ROGERS, individually  
and on behalf all others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH & CO., INC.; MERRILL  
LYNCH, PIERCE, FENNER & SMITH, INC.,  
and BANK OF AMERICA CORPORATION,

Defendants.

**11 Civ. 8472 (KBF) (DCF)**

**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, CONDITIONAL CERTIFICATION OF THE SETTLEMENT  
CLASS, APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL,  
AND APPROVAL OF PLAINTIFFS' PROPOSED NOTICES OF SETTLEMENT**

**Please take notice that,** upon the annexed Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiffs' Counsel as Class Counsel, and Approval of Plaintiffs' Proposed Notices of Settlement, dated November 7, 2012, the Declaration of Justin M. Swartz in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiffs' Counsel as Class

Counsel, and Approval of Plaintiffs' Proposed Notices of Settlement ("Swartz Decl."), and the Exhibits attached to same, Plaintiffs will move this Court, before the Honorable Debra Freeman, 500 Pearl Street, Courtroom 17A, at a time and date to be determined by the Court, for an ORDER:

(1) granting preliminary approval of the Joint Stipulation of Settlement and Release, attached as Exhibit A to the Swartz Decl.;

(2) conditionally certifying the proposed Rule 23 Class under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes;

(3) appointing Outten & Golden LLP and the Shavitz Law Group, P.A. as Class Counsel; and

(4) approving the proposed Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing and the proposed Notice of Proposed Settlement of Collective Action Lawsuit and Fairness Hearing, attached as Exhibits B and C to the Swartz Decl. respectively, and directing their distribution.

\* \* \*

A Proposed Order is attached hereto as **Exhibit A**, for the Court's convenience.

Dated: November 7, 2012  
New York, New York

Respectfully submitted,

By: /s/ Justin M. Swartz  
Justin M. Swartz

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***Attorneys for Plaintiffs and the Putative Class and  
Collective***